Kewalchand vs. Municipal Board, Balotra & Ors.
(S.B.Civil Writ Petition No.2307/2003)

Date of Order :- 11th May, 2006.

HON'BLE MR.JUSTICE R.C.GANDHI

Mr. S.D.Vyas, for the petitioners.
Mr. O.P.Boob, for the State.

(ORAL)

The petitioner by means of this petition seek directions, to the respondents for making payment of pension arrears with interest @ 18% ; to pay pension month by month and also to take disciplinary action against the officer who has delayed the case of the petitioner for grant of pension .

The petitioner was appointed as Naka Guard on 23rd April, 1957 in the Municipal Board, Balotra. He was promoted to the post of Sub Nakedar on production of the Certificate by him of his having passed 8th standard. Later on, the said Certificate on the basis of which the petitioner was granted promotion was found fake. The respondent vide notification dated 8.4.1987 initiated the proceedings of an enquiry under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958 (in short "C.C.A. Rules" hereinafter). During enquiry, the petitioner accepted his guilt and the penalty of dismissal was passed by the Administrator, Municipal Board,Balotra which subsequently stood modified by the Dy.Director, Local Self Department, Jodhpur, to compulsory retirement vide his order dated 3rd May, 1989. Since then, the petitioner made many representations to the respondents for release of the pensionary benefits but are in vain. The petitioner under such circumstances has approached the Court seeking relief prayed for .

The respondents in their reply has stated that the petitioner submitted forged certificate of 8th pass standard and believing it to be true, he was granted promotion to the post of Sub Nakedar. On coming to know this fraud, disciplinary proceedings under the C.C.A. Rules were initiated against the petitioner. He was charge sheeted on 8.4.1987. In reply to the Charge-sheet, the petitioner confessed his guilt and felt sorry. He was dismissed vide order dated 5.3.1988 by the Administrator, Municipal Board, Balotra which was subsequently modified vide order dated 3.5.1989 to compulsory retirement.

The petitioner filed writ petition challenging the order of his compulsory retirement which was dismissed on 19.12.1989. The pension case of the petitioner was processed and sent to the Pension Department. The respondent no.1 sought directions from the State Government for exemption of the qualification. The Dy.Director vide his communication dated 19.12.2002 informed that since the petitioner has been dismissed from service for his guilt of production of forged Certificate, a F.I.R. is required to be filed against him and no relaxation/exemption for qualification is required to be granted to the petitioner. The respondents under those circumstances have not released the pensionary benefits.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has submitted that the petitioner has not been dismissed from service dis-entitling him for grant of pension. An employee who has been compulsorily retired by way of penalty under the C.C.A.Rules is entitled to the pensionary benefits. The respondents though, dismissed the petitioner from service and thereafter the penalty has been modified as compulsory retirement. It carries the retiral benefits on compulsory retirement. The petitioner has rendered more than 30 years of service as he was appointed in the year 1957 and compulsorily retired in the year 1989. He has qualifying service of more than 30 years. The only lacunae in the case of the petitioner is that he has rendered the service as Sub Nakedar on his promotion on the basis of the forged certificate and whether that service could be counted as

qualifying service for pension. The penalty of withholding the pension and the dismissal can only be made in the special circumstances under the Service Rules. If the pension is not allowed, it will amount to imposition of another penalty and violation of the Service Rules,which cannot be permissible in law as the compulsory retirement is not treated as penalty under the C.C.A. Rules. The respondents have made an effort to sanction pension and papers were sent to the Pension Department for release of the pension but the Pension Department has raised objection for exemption of the qualification. The State has not granted any such exemption and rightly so as the petitioner has not behaved as a good and faithful servant and sought his promotion by mis-presention and fraud.

Be that as it may, the petitioner has rendered more than 30 years of service. Had thepromotion not been granted to the petitioner for which he has been penalised, it could be presumed that he was to continue on the post of Naka Guard. The respondents would have taken a view that in stead of giving the pension of the Grade of Sub-Nakedar, he could be given the pension of the post of Naka Guard. The petitioner has rendered the service to the employer. The penalty imposed do not dis-entitle the petitioner of the benefit of pension. His service on the promotional post can be treated on the lower post. The service which he has rendered against the promotional post should be treated to have rendered against the post of Naka Guard and his case should be processed.

Accordingly, the petition is allowed. The respondents are directed to process the case of the petitioner having compulsorily retired from service, taking into consideration the qualifying service of the petitioner for the post of Naka Guard till his retirement. The other reliefs as claimed will not be granted to the petitioner for the reason that the petitioner has not worked with the employer honestly and faithfully. The respondents including the Pension Department of the State will sanction the pension within three months from the date this order is served upon them.

(R.C.GANDHI),J.